

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company (U 39 E) to Adopt a Rate Stabilization Plan.

Application 00-11-056
(Filed November 22, 2000)

Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.

Application 00-10-028
(Filed October 17, 2000)

**OPINION ORDERING PACIFIC GAS AND ELECTRIC COMPANY
TO COMPLY WITH THE ATTACHED SERVICING ORDER****Summary**

In Decision (D.) 01-09-015, the Commission ordered Pacific Gas and Electric Company (PG&E) to provide the services requested by the California Department of Water Resources (DWR) as set forth in the “Servicing Agreement” attached to that decision, along with certain revisions.¹

¹ The term “Servicing Agreement” refers to the document approved by the Commission in D.01-09-015. The term “Proposed Servicing Agreement” refers to the document that was attached to DWR’s April 18, 2002 Memorandum request. The term

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D.01-09-015 allowed PG&E the option of seeking Bankruptcy Court approval of the Servicing Agreement. Instead of seeking approval from the Bankruptcy Court, on September 24, 2001, PG&E filed a motion with the Bankruptcy Court seeking an order that PG&E be entitled to refrain from entering into and implementing the Servicing Agreement as ordered by the Commission. PG&E's pending motion argues that the Bankruptcy Court should not consider approving the Servicing Agreement until several other disputed matters are resolved.

DWR claims that these disputed matters have now been resolved, and that the Commission should order PG&E to perform the services provided for in the Servicing Agreement. The matters which DWR asserts have been resolved include the adoption of the Rate Agreement between DWR and the Commission in D.02-02-051, the cost recovery of DWR's revenue requirement in D.02-02-052, and the interim cost-of-service revenue requirement for the utility retained generation of PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE).

On April 18, 2002, DWR submitted to the Commission a Memorandum² requesting that PG&E be ordered to comply with the terms and conditions set forth in the "First Amended And Restated Servicing Agreement" (Proposed Servicing Agreement).

"Servicing Order" refers to the document found in Appendix B and C of this decision, and which we order PG&E to comply with.

² DWR's April 18, 2002 Memorandum is titled "Request for Servicing Order to Incorporate Provisions Related to the Rate Agreement."

Today's decision approves the Servicing Order attached to this decision, and orders PG&E to comply with such order. The Servicing Order sets forth the terms and conditions under which PG&E is ordered to provide transmission and distribution of DWR-purchased electricity, as well as billing, collection and related services. The Servicing Order that we approve is based on a modified version of the Proposed Servicing Agreement that was attached to DWR's April 18, 2002 Memorandum request. The language of the Servicing Order has been changed from that found in the Proposed Servicing Agreement to reflect that the Commission is ordering PG&E to comply with the terms and conditions of the Servicing Order.

Background

DWR's April 18, 2002 Memorandum requests that the Commission order PG&E to perform the services described in the Proposed Servicing Agreement and related attachments. The Proposed Servicing Agreement is based on the Servicing Agreement which the Commission ordered PG&E to enter into in D.01-09-015, along with certain revisions. DWR requests that the Commission issue an order to PG&E so that DWR can implement certain provisions of the Rate Agreement, facilitate the issuance of bonds authorized under Water Code Section 80130,³ and to ensure that DWR receives the appropriate remittances for DWR-procured energy delivered to PG&E's customers. The Memorandum, together with the Proposed Servicing Agreement and related attachments, were electronically transmitted to the Commission and to the service list in the above-captioned proceedings.

³ Water Code Section 80130 and the related statutes discussed in this decision were added by Assembly Bill 1 of the First Extraordinary Session of 2001-2002 (Stats. 2001, Ch. 4), commonly referred to as AB1X.

DWR's Memorandum request is similar to the two petitions for modification of the servicing agreements that the Commission originally approved for SDG&E and SCE in D.01-09-013 and D.01-09-014, respectively. The petitions for modification of those two decisions were filed to incorporate the adoption of the Rate Agreement between DWR and the Commission, and other Commission actions. Those two petitions for modification were granted in D.02-04-047 and D.02-04-048.

On April 22, 2002, the assigned Administrative Law Judge (ALJ) issued a ruling establishing a schedule to process DWR's Memorandum request. Opening comments and reply comments were filed on April 29, and May 3, 2002, respectively. The ruling also informed the parties that a draft decision addressing DWR's Memorandum request and the Proposed Servicing Agreement would be placed on the Commission's May 16, 2002 agenda, and that a draft decision would issue for comment on or before May 8, 2002.

On April 29, 2002, PG&E filed comments in response to DWR's April 18, 2002 Memorandum request. DWR submitted a Memorandum on May 3, 2002 responding to PG&E's April 29th comments.

Summary of the Changes to the Proposed Servicing Agreement

The Proposed Servicing Agreement that was submitted by DWR is based upon the Servicing Agreement that was approved by the Commission in D.01-09-015. DWR made a series of changes to the Servicing Agreement. The changes reflected in the Proposed Servicing Agreement incorporate the changes to the Servicing Agreement which were ordered by Ordering Paragraphs 2 and 3 of D.01-09-015, cost recovery of DWR's revenue requirement as specified in D.02-02-052 and as modified by D.02-03-003 and D.02-03-062, and certain charges owed to the California Independent System Operator (ISO) by DWR.

The Proposed Servicing Agreement was compared to the Servicing Agreement approved in D.01-09-015. Appendix A of this decision lists the location of the changes made to the Proposed Servicing Agreement which differ from the language in the Servicing Agreement. The Proposed Servicing Agreement is similar to the First Amended and Restated Servicing agreements that were approved at the request of SCE and SDG&E in D.02-04-047 and D.02-04-048, respectively.

PG&E's Position

PG&E is opposed to DWR's Memorandum request. PG&E contends that DWR's request is premature because DWR has not responded to, or begun negotiating, the revisions that PG&E has suggested to the Proposed Servicing Agreement and to the related imbalance energy document which was submitted with the Memorandum to the Commission.⁴ PG&E states that the issuance of a Commission decision at this time is likely to significantly delay the negotiation and implementation of a mutually acceptable agreement which resolves the bankruptcy-related issues.

PG&E also contends that the Proposed Servicing Agreement is "significantly flawed and unlawful" due to several reasons. First, according to PG&E, the Proposed Servicing Agreement seeks to eliminate Bankruptcy Court approval. Second, according to PG&E, the Proposed Servicing Agreement fails to address the concerns that have been raised in the Bankruptcy Court. Third, according to PG&E, the Proposed Servicing Agreement requires excessive remittances to DWR. And fourth, according to PG&E, the Proposed Servicing

⁴ The imbalance energy document was attached to the Proposed Servicing Agreement as Attachment I.

Agreement unjustly discriminates between PG&E and the other utilities by imposing provisions that are contrary to the provisions DWR has agreed to with the other utilities.

PG&E recommends that the Commission deny DWR's request and allow DWR and PG&E to resume their negotiations to make mutually agreeable changes to the Proposed Servicing Agreement. Alternatively, PG&E recommends that the Commission defer acting on DWR's request until both parties report on whether they have been able to mutually resolve the remaining issues relating to the Proposed Servicing Agreement in a manner that would allow both of them to support such an agreement before the Commission and the Bankruptcy Court.

Discussion

A. Background

Today's decision acts affirmatively on DWR's Memorandum request instead of postponing action on DWR's request.

Although PG&E believes that it should be given time to negotiate a mutually acceptable agreement with DWR, we note that the negotiations over the Proposed Servicing Agreement have been ongoing. PG&E acknowledges in its comments that "the recent negotiations between DWR and PG&E on the main servicing agreement (alluded to in DWR's April 18, 2002, request) began in earnest only on Wednesday, March 27, 2002, when DWR provided to PG&E a first draft of DWR's recommended revisions to the main servicing agreement." (PG&E Comments, p. 5.) PG&E further states that on April 12, 2002, "after conference calls with DWR and the Commission to discuss the substance of DWR's proposal, PG&E provided DWR and the Commission by e-mail its formal comments and suggestions, including a redlined version of the draft servicing

agreement.” (PG&E Comments, p. 5.) According to PG&E, on April 17, 2002, PG&E provided DWR with a revised proposal for imbalance energy and other disputed ISO charges. Instead of responding to PG&E’s comments and suggestions to the terms of the Proposed Servicing Agreement, PG&E states that DWR chose to submit its Memorandum request to the Commission.

DWR’s Memorandum request implies that it met with PG&E, but that it was unable to come to an agreement with PG&E as to what amendments to the servicing agreement were needed. DWR’s Memorandum also notes that the two negotiated over Attachment I of the Proposed Servicing Agreement.

In its May 3, 2002 Memorandum response to PG&E’s comments, DWR acknowledges that it provided PG&E with an initial draft of the Proposed Servicing Agreement on March 27, 2002. DWR’s response also states that it had several subsequent conference calls with PG&E to discuss the draft and to expedite negotiations. DWR states that it “advised PG&E as to the need to complete the negotiations by mid-April and ... would need to seek a servicing order in the event that negotiations were not complete by such time.” (DWR Memorandum Response, p. 2.)

Even though the Commission previously approved the Servicing Agreement in D.01-09-015, the Bankruptcy Court has yet to approve it. PG&E contends that DWR and the Commission have been responsible for the delays in the Bankruptcy Court’s review of the Servicing Agreement. PG&E states that:

“Counsel for the Commission and DWR have reaffirmed on several occasions in their pleadings that action in the Bankruptcy Court on the servicing agreement at issue therein was premature, or not ripe, in light of further expected amendments to the servicing agreement to reflect the outcome of the CPUC-DWR negotiations on the rate agreement. For example, the Commission’s February 14, 2002, reply to PG&E’s September 24, 2001, motion before the Bankruptcy Court confirmed that – even

as of February, 2002 – the matter was not yet ‘ripe.’” (PG&E Comments, p. 4.)

By mutual agreement of PG&E, DWR and the Commission, a hearing is now scheduled in Bankruptcy Court for June 17, 2002, to consider any revised motion (to be filed by the parties by May 17, 2002) on the servicing agreement.⁵

Regardless of who is responsible for the delay in the Bankruptcy Court, the Commission’s obligation is to comply with Water Code Sections 80016 and 80106(b). Although PG&E indicates in its comments that it would like to agree on a mutually acceptable servicing arrangement, DWR and PG&E have been unable to do so. In addition, the Bankruptcy Court has not yet ruled on PG&E’s motion. Since DWR has made a request of us pursuant to Water Code Section 80106(b), and explained why the Commission needs to act expeditiously and order PG&E to comply with the Proposed Servicing Agreement, we must examine what is before us now, and decide whether we should order PG&E to comply.

B. Discussion Regarding Bankruptcy Court Approval

PG&E contends that “any and all agreements outside the ordinary course of business may not take effect unless and until they have been reviewed and approved by the Bankruptcy Court.” (PG&E Comments, p. 7.) DWR’s

⁵ According to PG&E’s May 13, 2002 “Periodic Status Report Concerning Submission of Proposed Servicing Agreement to the United States Bankruptcy Court for the Northern District of California”: “PG&E continues to discuss with interested parties the issue of filing a revised motion before the Bankruptcy Court. Such discussions are now being undertaken in light of ... (DWR’s) April 18, 2002 request to the Commission that PG&E be ordered to perform the services set forth in a revised, contested draft of the servicing agreement, and the Commission’s May 9, 2002 Draft Decision entitled ‘Opinion Ordering Pacific Gas and Electric Company to Comply With the Attached Servicing Order.’”

position is that the Commission, as the regulatory body of public utilities, can order PG&E to provide the services authorized by AB1X without making the Commission's order subject to the approval of the Bankruptcy Court.

As explained above, PG&E has not yet reached an agreement with DWR. DWR has requested that we order PG&E to comply with the terms and conditions set forth in the Proposed Servicing Agreement.

Today's action ordering PG&E to comply with the Servicing Order is consistent with the statutory authority provided for in Water Code Sections 80016 and 80106(b). Water Code Section 80016 provides in pertinent part that all state agencies "shall and are hereby authorized to, at the request of the department [DWR], give the department reasonable assistance or other cooperation in carrying out the purposes of this division." Water Code Section 80106(b) provides that at DWR's request, "the commission shall order the related electrical corporation ... to transmit or provide for the transmission of, and distribute the power and provide billing, collection, and other related services, as agent of the department, on terms and conditions that reasonably compensate the electrical corporation for its services." In the April 18, 2002 Memorandum request, DWR made such a request, and asked the Commission to order PG&E to comply with the terms and conditions set forth in the Proposed Servicing Agreement.

Pursuant to statutory authority, today's decision orders PG&E to perform certain services for DWR on the terms and conditions specified in the attached Servicing Order. In short, the Servicing Order is not an agreement between PG&E and DWR, but rather a Commission order directing PG&E to comply. As such, this Servicing Order does not require any approval from the Bankruptcy Court.

C. Discussion Regarding PG&E's Other Contentions

PG&E makes several other arguments as to why it believes the Proposed Servicing Agreement is substantively flawed. PG&E's first argument is that several provisions of the Proposed Servicing Agreement require PG&E to overpay DWR. PG&E contends that the overpayment would damage PG&E's estate and unlawfully impact PG&E's revenues. One of these provisions is found in Section 4.1 of the Proposed Servicing Agreement, which would require the remittance of "DWR Charges," instead of "DWR Revenues."

Under the Proposed Servicing Agreement, DWR Charges are defined as the "amounts authorized to be collected from Customers," while DWR Revenues are defined as those "DWR Charges collected from Customers required to be remitted to DWR by Utility." According to PG&E, the approach found in the Proposed Servicing Agreement would cause PG&E to remit more money to DWR than PG&E actually collects from customers. PG&E contends that PG&E's remittance obligations to DWR should be limited to the amounts that PG&E receives.

In DWR's May 3, 2002 Memorandum Response, DWR agrees that Section 4.1 of the Proposed Servicing Agreement should be replaced with the same text contained in SCE's amended and restated servicing agreement. (See D.02-04-047, App. A, Section 4.1.) DWR states that the revised text should read as follows:

"DWR Revenues required to be remitted to DWR under this Agreement shall be based upon DWR Charges in effect from time to time pursuant to Applicable Law."

Since DWR agrees that the change to Section 4.1 should be made, that change has been incorporated in the Servicing Order. As PG&E notes, this

change is consistent with Water Code Section 80112 which references that moneys “received by an electrical corporation” are to be remitted to DWR.

PG&E’s second argument is that the technical changes that DWR made to the remittance procedures in the Proposed Servicing Agreement would result in excessive payments to DWR. PG&E cites Attachment I of the Proposed Servicing Agreement as an example of this. PG&E asserts that DWR’s proposal for a lump sum payment fails to account for uncollectibles.

DWR did not respond to PG&E’s argument regarding uncollectibles. We have examined the provisions in Attachment I and have made changes to Exhibit B and Exhibit D of Attachment I to account for uncollectibles.

With regard to uncollectibles, Exhibit C to Attachment I expressly provides for an Uncollectibles Adjustment for Scheduled Energy for the period January 17, 2001 through May 31, 2001. We cannot tell from the submissions of PG&E and DWR whether an uncollectibles adjustment is necessary for the period thereafter. Accordingly, we are adding language that will allow PG&E to make an adjustment for uncollectibles for Imbalance Energy, beyond that expressly provided for, if PG&E’s methodology has not already incorporated such an adjustment. In other words, PG&E should be allowed to adjust to accurately reflect uncollectibles, but should not make any additional adjustments if its figures already reflect uncollectibles.

With regard to Franchise Fee Remittance Adjustments, DWR’s Proposed Servicing Agreement does not make any express provision for uncollectibles. Accordingly, we are adding similar language to allow PG&E to accurately reflect uncollectibles in making these Franchise Fee Remittance Adjustments.

PG&E is also concerned about possible over-remittances from DWR’s insertion of the word “retail” in the denominator of the formula in section 3 of

Attachment B. PG&E states that this change may have the effect of increasing remittances to DWR. PG&E also asserts that depending on how Imbalance Energy is defined, the numerator of the DWR percentage may also be affected, which would further increase the remittances to DWR. In PG&E's comments on the Draft Decision at page 6, PG&E expressed concern that DWR's use of the term "total retail demand" would exclude components such as the Western Area Power Administration (WAPA). PG&E further states that if "it is DWR's intention to exclude WAPA load from 'total retail demand' such an approach would be inconsistent with prior Commission decisions ... and would result in payments to DWR higher than they should be."

DWR did not respond to the issue of the use of the word "retail" in section 3 of Attachment B. However, if we compare the language in section 7 of Attachment B of the original Servicing Agreement, adopted in D.01-09-015, to section 3 of Attachment B of the Proposed Servicing Agreement, the denominator used for the allocation of DWR Power is the same. That is, the denominator in the original Servicing Agreement is "total bundled service energy provided to Customers," while the Proposed Servicing Agreement refers to "total retail demand." Although the wording is different, the concept of "total retail demand" is identical to "total bundled service energy provided to Customers." That said, we observe that as a policy matter, we have consistently articulated at the Federal Energy Regulatory Commission (FERC) and elsewhere that retained generation is to serve PG&E's native load customers, i.e., customers that are not served by the WAPA. As far as we are concerned, and to avoid any uncertainty, we state that WAPA customers are being served with DWR power, and should be included in the denominator used to establish the DWR Percentage. WAPA load should also be reflected in the numerator used to establish the amount of DWR power. Those changes have been made to section 3 of Attachment B.

The third argument of PG&E is that the Proposed Servicing Agreement fails to address key issues that were raised in the Bankruptcy Court, but which have not been resolved. (See PG&E Comments, pp. 8-9.) In its motion pending before the Bankruptcy Court, PG&E argued that the Servicing Agreement failed to protect its estate from DWR's possible misuse of PG&E's transmission and distribution facilities. That is, the Servicing Agreement does not prevent DWR from taking action in the future that PG&E contends would be illegal. (See PG&E's Comment On Draft Decision, App. B, p. 2.) There is nothing improper about a Commission order that does not remove all possibility of others taking illegal action in the future.

In its Bankruptcy Court motion, PG&E also argued that the Servicing Agreement contravened state law, because it did not allow customers to direct partial payments on their bills only to PG&E charges. According to PG&E, if customers were allowed to direct their payments in this manner, they could pay only their PG&E charges, and not pay their DWR charges, and still avoid shut-off of their electric service. PG&E's argument ignores important provisions of AB1X. Water Code Section 80108 provides: "The commission may issue rules regulating the enforcement of the agency function pursuant this division, including collection and payment to the department." Water Code Section 80110 states: "The department shall have the same rights with respect to the payment by retail end use customers for power sold by the department as do providers of power to such customers." Thus, in AB1X the Legislature provided ample authority for the Commission to require how PG&E shall apply the funds it collects when it bills for both DWR and PG&E power, and to authorize the shut-off of electric service to customers who do not pay their DWR charges. The Commission is well within its authority to prevent PG&E from facilitating customers who might wish to give preference to the payment of PG&E charges.

The provisions of Civil Code Section 1479, which establishes general rules concerning how a creditor is to apply payments by a debtor, do not override the more recent and specific provisions of the Water Code.

D. ISO Charges

PG&E contends that the terms of the Proposed Servicing Agreement are inconsistent with the March 27, 2002 determinations of the FERC regarding DWR's responsibility for ISO-invoiced charges. In particular, PG&E points out that the second paragraph of Attachment I to the Proposed Servicing Agreement states: "This Letter Agreement specifically does not address the financial responsibilities as to certain transmission, distribution and administrative costs also included in the ISO invoices submitted to CDWR." PG&E contends that to the extent that the Proposed Servicing Agreement provides only for partial acceptance of certain charges, and reserves for later determination the responsibility for charges that DWR has been ordered by FERC to pay to the ISO, the Proposed Servicing Agreement is an illegal attempt to avoid the effect of the FERC orders.

PG&E states that another example of this inconsistency is found in Section 2 of Attachment I to the Proposed Servicing Agreement where it states: "CDWR does not assume responsibility for any ISO charges invoiced relating to or with respect to the ISO Scheduling Coordinator IDs PGAE or PGAB." PG&E contends that the FERC Order makes clear that all charges covered by Section 2.2.7.3 of the ISO tariff⁶ are the responsibility of DWR.

⁶ According to PG&E, these charges include imbalance energy, ancillary services, grid operator's charge, usage charge and other charges associated with servicing the net short position of the non-creditworthy utilities.

Another example cited by PG&E is the remittance procedure set forth in Exhibit B of Attachment I, wherein DWR proposes that “Imbalance Energy bought or sold by PG&E in connection with its non-retail obligations shall not be considered Imbalance Energy.” PG&E believes that the Commission should reject that version and any other provision that does not specify that PG&E will not assume ISO charges allocable to DWR under the FERC determination made on March 27, 2002.

We are not convinced by PG&E’s argument that the Servicing Order must refer to each and every ISO charge that DWR is responsible for. So long as we do not order anything contrary to what the FERC requires, our order is not unlawful. If the Servicing Order does not address a particular ISO invoiced charge, DWR still has to abide by any determination that the FERC has made in this regard. The fact that the Servicing Order may omit a reference to a particular ISO invoiced charge has no impact on DWR’s FERC-imposed obligations, whatever those obligations may be. The Servicing Order’s reference to DWR’s refusal to assume ultimate responsibility “for any ISO charges invoiced relating to or with respect to the ISO Scheduling Coordinator Ids PGAE or PGAB” is simply an acknowledgement of DWR’s position on this issue, and reflects no judgment on the merits of DWR’s position. In any case, we do not understand FERC to have ever addressed DWR’s ultimate responsibility for ISO Invoiced Charges for the two identified Scheduling Coordinator IDs in any of the FERC’s creditworthiness orders.

In PG&E’s comments to the Draft Decision, PG&E acknowledges that “While it is true as a legal matter that DWR’s FERC-imposed obligations are not changed by a decision of the Commission, the Commission’s actions here make it more difficult for PG&E and DWR to separate PG&E’s authorized URG-related revenues [from] DWR’s AB X1 revenues in compliance with DWR’s FERC-

imposed obligations.” We note that this issue was raised in connection with the utility retained generation decision, and that the Commission left this matter open for future resolution. (See D.02-04-016, p. 16.)

PG&E also argues in its comments on the Draft Decision at page 7 that the fact that this decision does not order DWR to pay for certain disputed ISO charges violates Water Code Section 80106(b). That section requires a Servicing Order to reasonably compensate the electrical corporation for its transmission, distribution, billing and related services. The charges that PG&E is arguing about here are charges for power that the ISO has provided and whether PG&E or DWR should pay them. Water Code Section 80106(b) is not pertinent to, and does not address that issue.

E. Discussion Regarding Unjust Discrimination

PG&E argues that the Proposed Servicing Agreement is inconsistent with the agreements that DWR reached with SCE and SDG&E, and that DWR is discriminating against PG&E. PG&E contends that this has occurred with respect to the increased remittance procedures as described earlier, and with the remittances and charges for scheduled energy, imbalance energy, and ISO charges. Instead of resolving all issues, as DWR did with SDG&E and SCE, PG&E contends that these unresolved issues will generate further controversy and litigation.

DWR’s May 3, 2002 Memorandum Response cites several reasons why the Proposed Servicing Agreement for PG&E differs from those of SCE and SDG&E.

PG&E’s allegation regarding unjust discrimination is not persuasive. Unlike PG&E, SDG&E and SCE were able to negotiate mutually acceptable terms and conditions in their respective amended servicing agreements. PG&E

continues to disagree with DWR's proposals. In addition, DWR points out that certain provisions were requested by SCE or SDG&E, while PG&E requested a different provision or did not request the same kind of change. Furthermore, DWR notes that PG&E's billing systems are different from those of SCE and SDG&E, and it had to incorporate certain billing methodology provisions in Attachment B of the Proposed Servicing Agreement to accommodate PG&E's processes. Finally, the fact that PG&E's agreement is the last of the three submitted has allowed DWR to refine PG&E's document to an extent that was not possible with the other two agreements. We decline to reject the Proposed Servicing Agreement and the Servicing Order on the grounds that certain provisions for PG&E differ from that of the other two utilities.

F. Servicing Order

We have reviewed the terms and conditions of the Proposed Servicing Agreement, the compensation to be paid to PG&E, the positions of the parties, the relevant Commission decisions, and our statutory responsibilities. Water Code Section 80106(b) requires the Commission to order the electric utility to provide transmission and distribution of electric power, and to provide billing, collection, and other related services, upon the request of DWR. DWR has requested that we order PG&E to provide the services described in the Proposed Servicing Agreement.

We approve the attached Servicing Order and all of the related attachments, and order PG&E to comply with the Servicing Order and the attachments.

The basis of the Servicing Order is the Proposed Servicing Agreement which DWR submitted along with its April 18, 2002 Memorandum request. We title the attached Servicing Order a "Servicing Order Concerning State Of

California Department of Water Resources And Pacific Gas and Electric Company” (Servicing Order). We agree with PG&E’s footnote 4 of its comments that the label of “First Amended And Restated Servicing Agreement” is misleading. An “agreement” implies that there is a mutual understanding or arrangement between the parties regarding a method of action. Although DWR and PG&E have had ongoing discussions about the Servicing Agreement and the Proposed Servicing Agreement, the two have not reached a meeting of the minds on all of the terms. Accordingly, we have made a series of changes throughout the Servicing Order to reflect the fact that PG&E is being ordered to comply with the terms and conditions set forth in the Servicing Order and the related attachments.

For ease of comparison, all of the changes that we have made to the Proposed Servicing Agreement are shown in the “redline” version of the Servicing Order that is attached to this decision as Appendix B. Appendix C of this decision is the “clean” copy of the Servicing Order incorporating all the changes that we have made.

Certain of the changes that we have made warrant further explanation. In Section 2.3 of the Servicing Order, we have added language to reflect the provisions contained in Water Code Section 80112.⁷ This change helps to clarify the separation of the DWR and PG&E revenue streams.

We have deleted the provisions in Attachment D of the Servicing Order because there is no contract between DWR and PG&E. The provisions in Exhibit F to Attachment I have been deleted as unnecessary to this order because the adjustments addressed therein are already the subject of Commission

⁷ Similar provisions can be found in Sections 4.2, 8.1 and 14.4 of the Servicing Order.

decision D.02-02-052 (rehearing denied in D.02-03-062). By omitting Exhibit F of Attachment I from this order, we are in no way intending to suggest any departure from our prior order, and PG&E remains obligated to comply with it. Attachment I has been changed to reflect the fact that it is not a “letter agreement,” but rather is simply an attachment to the Servicing Order with which PG&E is being ordered to comply. We have added a provision to Section 7.1 of the Servicing Order which states that DWR agrees to pay to PG&E those fees that will allow PG&E to recover its incremental cost of establishing certain procedures, systems and mechanisms to perform the services in connection with the Bond Charges. These and other changes made to the Servicing Order are shown in Appendix B.

We have also added subsection (d) to section 2.2. of Service Attachment 1 which requires that additional information about DWR Charges be provided on customer bills.⁸ In PG&E’s comments on the Draft Decision, PG&E asserts that this change will “significantly delay the installation of the replacement [customer information system] CIS.” PG&E further asserts that adding lines onto customer bills relating to DWR Charges will result in great expense.

As to PG&E’s argument that this change will lead to greater expense, we observe that PG&E is entitled to recover its incremental expenses incurred in implementing the mandates of the Servicing Order. Thus, PG&E will not be financially prejudiced by what we are ordering.

⁸ We intend to ask both SCE and SDG&E to add the same provision to their amended servicing agreements.

With regard to PG&E's contention about delaying the replacement CIS, we are not persuaded by PG&E's contention that adding a single additional line to customer bills will significantly delay the migration to a new CIS. Were this the case, we seriously doubt that PG&E would have proposed its line item to the Bankruptcy Court. Furthermore, if the new CIS is as inflexible as PG&E's arguments suggest, i.e., if the CIS cannot readily handle changes to single lines of a customer bill, then it would be an extraordinarily unwise investment. Finally, the Commission has not yet implemented a Bond Charge. Therefore, PG&E will have sufficient lead time following this order to implement any billing changes needed to accommodate the addition of a Bond Charge line item to customer bills.

In its comments on the Draft Decision, PG&E asserts that the Servicing Order has "no clear legal effect over DWR." We note that DWR has consistently represented before the Commission and to the parties that it will do everything in its power to fulfill all of its obligations. We intend to hold DWR to those representations. In addition, DWR has certain statutory requirements and obligations to fulfill under AB1X. In the event that DWR defaults on its agreed-upon responsibilities under this Servicing Order, PG&E is free under the terms of the order to come to the Commission and seek appropriate relief as set forth in section 5.4 of the Servicing Order, Appendix C hereto.

Today's decision ordering PG&E to comply with the Servicing Order is not unlike other Commission decisions that we have issued with respect to DWR's energy procurement role. For example, in D.01-01-061, we ordered PG&E to segregate, and hold in trust for the benefit of DWR, certain amounts its customers had paid for DWR's electricity. In D.02-02-052, we ordered the three major electric utilities to disburse the revenue requirement of DWR to DWR "as

required by their respective servicing agreements or commission order....”
(D.02-02-052, p. 114, OP 3.)

This Servicing Order is effective today, and PG&E is ordered to comply with all the terms and conditions set forth in the Servicing Order and related attachments.

G. Expedited Treatment

DWR requests expedited treatment of its April 18, 2002 Memorandum request in order to facilitate the issuance of bonds pursuant to Chapter 2.5 of AB1X. According to DWR’s May 3, 2002 Memorandum Response, the Servicing Order is needed “to ensure that Department’s revenues are properly collected and accounted for, to ensure that the Department will receive the amounts to which it is entitled, to implement the Rate Agreement adopted in CPUC Decision 02-02-051 and to ensure that the Department’s revenues will be available notwithstanding PG&E’s financial difficulties or pending Chapter 11 proceeding in U.S. Bankruptcy Court.”

Without a servicing arrangement, DWR states that “the Department’s financing plans cannot be achieved on reasonable terms.” The consequence of a failure to achieve DWR’s financing plans “will prevent the repayment of the State of California General Fund for advances made at the height of the power crisis, will impair the Department’s ability to continue providing adequate supplies of power in California at reasonable prices, and will, accordingly, jeopardize the health, safety and welfare of all Californians.”

PG&E argues that the Commission should not allow itself to be pressured by DWR’s sense of urgency to order PG&E to perform services under the Proposed Servicing Agreement.

Our approval of a Servicing Order for PG&E, and ordering PG&E to comply with the order is an essential step to the successful sale of the electricity revenue bond issue that is being prepared by DWR. We have already approved the amended Servicing Agreements for SCE and SDG&E on an expedited basis. In order to lay the groundwork for the issuance of the bonds, a similar servicing arrangement needs to be in place for PG&E. Therefore, we will comply with DWR's request to issue a Servicing Order for PG&E on an expedited basis. The failure to address DWR's request on an expedited basis could lead to a delay in the issuance of the DWR bonds, and could result in severe impacts.

We observe further that PG&E and DWR engaged in negotiations over several weeks prior to DWR submitting its request for a servicing order, and that PG&E had an opportunity to comment on both DWR's submittal and on the draft decision. We therefore conclude that expedited action on DWR's submittal does not prejudice PG&E.

Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB1X (Chapter 4 of the Statutes of 2001-02 First Extraordinary Session). Pursuant to Public Utilities Code Section 1731(c), any application for rehearing of this decision must be filed within 10 days of the date of issuance of this decision, and the provisions of Public Utilities Code Section 1768 are applicable to any judicial review of this decision.

Comments

The draft decision of the assigned ALJ was mailed to the parties on May 9, 2002. Comments on the draft decision were filed by PG&E on May 13, 2002. PG&E's comments have been reviewed, and appropriate changes have been made to this decision and to the attached Servicing Order.

The time for filing comments on the draft decision was shortened in accordance with Rule 77.7(f)(9) of the Commission's Rules of Practice and Procedure. As noted in DWR's April 18, 2002 Memorandum request, and its May 3, 2002 Memorandum response, the public interest of adopting a decision without the full comment period outweighs the public interest of a 30-day comment period.⁹

Findings of Fact

1. On September 24, 2001, PG&E filed a motion with the Bankruptcy Court seeking an order that PG&E be allowed to refrain from entering into and implementing the Servicing Agreement that was adopted by the Commission in D.01-09-015.
2. On April 18, 2002, DWR submitted and served its Memorandum requesting that the Commission order PG&E to comply with the terms and conditions set forth in the Proposed Servicing Agreement and the related attachments.
3. The Proposed Servicing Agreement is based on the Servicing Agreement which the Commission ordered PG&E to enter into in D.01-09-015.
4. The changes reflected in the Proposed Servicing Agreement incorporate the changes to the Servicing Agreement which were ordered in D.01-09-015, cost

⁹ PG&E's comments on the Draft Decision at pages 2 and 4 uses the term "waiver" and states that "the Draft Decision's waiver of the normal opportunity for comment by PG&E as an interested party violates PG&E's procedural due process rights." We have not "waived" PG&E's right to comment on DWR's Memorandum request, nor have we waived PG&E's right to comment on the Draft Decision. PG&E, as well as other parties, were provided with the opportunity to comment on both the Memorandum request and on the Draft Decision. PG&E has taken full advantage of that opportunity.

recovery of DWR's revenue requirement as specified in Commission decision, and certain charges owed to the ISO by DWR.

5. The Proposed Servicing Agreement is similar to the amended servicing agreements that were approved by the Commission in D.02-04-047 and D.02-04-048.

6. The negotiations over the Proposed Servicing Agreement have been ongoing, and began in earnest on or about March 27, 2002.

7. Although the Commission previously approved the Servicing Agreement in D.01-09-015, the Bankruptcy Court has yet to approve it.

8. DWR and PG&E have been unable to agree on a mutually acceptable servicing arrangement.

9. DWR agrees that Section 4.1 of the Proposed Servicing Agreement should be revised.

10. Changes have been made to Attachment I to account for uncollectibles.

11. The reference to "total retail demand" in the Proposed Servicing Agreement should be changed to recognize that DWR power serves WAPA.

12. There is nothing improper about a Commission order that does not remove all possibility of others taking illegal action in the future.

13. The Servicing Order's reference to DWR's refusal to assume responsibility for any ISO charges invoiced for ISO Scheduling Coordinator Ids PGAE or PGAB is simply an acknowledgement of DWR's position on this issue, and does not reflect any judgment on the merits of DWR's position.

14. PG&E's allegation regarding unjust discrimination is not persuasive in light of the mutual agreements between DWR and the other two utilities, the different billing system, and the different provisions requested by the three utilities.

15. The change to Section 2.3 of the Servicing Order helps to clarify the separation of the DWR and PG&E revenue streams.

16. PG&E has sufficient lead time following this order to implement any billing changes needed to accommodate the addition of a Bond Charge line item to customer bills.

17. DWR has consistently represented before the Commission and to the parties that it will do everything in its power to fulfill all of its obligations.

18. DWR has certain statutory requirements and obligations to fulfill under AB1X.

19. Today's decision is similar to other Commission decisions that we have issued with respect to utilities providing services to DWR in connection with DWR's energy procurement role.

20. The approval of a Servicing Order for PG&E, and ordering PG&E to comply with the order, is an essential step towards the successful sale of the DWR bond issuance.

Conclusions of Law

1. The Commission's action ordering PG&E to comply with the Servicing Order is consistent with the statutory authority in Water Code Sections 80016 and 80106(b).

2. The Servicing Order is not an agreement between PG&E and DWR, but rather it is a Commission order directing PG&E to comply with the terms and conditions set forth in the Servicing Order and the related attachments.

3. The Servicing Order does not require any approval from the Bankruptcy Court.

4. AB1X provides ample authority for the Commission to require how PG&E shall apply the funds it collects when it bills for both DWR and PG&E power,

and to authorize the shut-off of electric service to customers who do not pay their DWR charges.

5. Civil Code Section 1479 does not override the more recent and specific provisions of the Water Code.

6. As long as the Commission does not order anything contrary to what the FERC requires, our order is not unlawful.

7. If the Servicing Order does not address a particular ISO invoiced charge, DWR still has to abide by any determination that the FERC has made in this regard.

8. The Servicing Order and all of the related attachments should be approved, and PG&E should be ordered to comply with the Servicing Order and the attachments.

9. An “agreement” implies that there is a mutual understanding or arrangement between the parties regarding a method of action.

10. The Commission should expedite DWR’s request to issue a Servicing Order for PG&E.

11. This decision construes, applies, implements, and interprets the provisions of AB1X.

12. Any application for rehearing of this decision must be filed within 10 days of the date of issuance of this decision.

O R D E R

IT IS ORDERED that:

1. The “Servicing Order Concerning State of California Department of Water Resources and Pacific Gas and Electric Company” (Servicing Order), attached

hereto as Appendix B (redline from Proposed Servicing Agreement) and Appendix C (clean copy), is approved and is adopted as part of this decision.

2. The effective date of the Servicing Order shall be today.

3. Pursuant to Water Code Sections 80106(b) and 80016, Pacific Gas and Electric Company is ordered to comply with all of the terms and conditions of the Servicing Order as set forth in Appendix C of this decision.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

Location of Amendments and Restatements to the “First Amended and Restated
Servicing Agreement”

Page	Location Of Change
Cover Page	Title; date of Bankruptcy Court approval deleted.
(i)	Title; pagination; Attachment I added.
1	Title; introductory paragraph; Recitals B, D-F.
2	Recitals G-H; 1.2; 1.3.5.; 1.4.
3	1.10.; 1.10.5.
4	1.21; 1.27.-1.29.; 1.31.; 1.33.3; 1.33.7.
5	1.41.; Second “1.41.” should be “1.42.” and subsequent numbering through “1.60.” should be changed.
6	1.46.; 1.48.3.; 1.48.7.; 1.48.; 1.49.5.; 1.53.
7	1.59.; 1.60.
8	Last sentence of 2.2.(b); 2.2.(c); 2.2.(d).
9	2.3.; 2.5.; 3.1.(a).
10	3.1.(a); 3.2.; 3.4.
11	4.1.; 4.2.; 4.2.(a).
12	5.1.
13	5.3.
18	7.3.(b); 8.1.
19	8.2.(a).
21	10.(a).
22	10.(d).
23	13.2.
25	14.3.(d)
28	14.14.(a) DWR contact.
29	14.16.
30	Attachment I added.
Signature Page	“First Amended and Restated”

	added.
S-A-1	There should be a “Section 6” heading listed.
S-A-2	2.2.(a).
S-A-4	Section 3.
S-A-5	Section 6.
Attachment B, p. 1	Title; Section 1.
Attachment B, p. 2	Sections 3 and 4.
Attachment B, p. 3	Sections 4-7.
Attachment B, p. 4	Sections 7(b)-9.
Attachment C-1	
Attachment E, p. 1	Sections 1-3.
Attachment E, p. 2	Section 7.
Attachment I	New Attachment

(END OF APPENDIX A)